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Maine seeks aquatic reforms

By JOHN RICHARDSON, Portland Press Herald Writer

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Maine is about to test a new system for managing coastal waters under growing pressure from development, industry and recreation.

A bill moving through the state Legislature calls for a pilot study of so-called bay management plans, which could help balance competing uses of the ocean similar to the way planning and zoning rules work on land. But while the idea sounds simple on the surface, some fear it could put state resources under local control and leave some users, such as fish farmers and shellfish farmers, high and dry.

The goal of reducing the growing conflicts along the coast has wide appeal. But questions about who would create and oversee the plans and whether the system clashes with old maritime laws and traditions will take time to answer, officials say.

"There are too many unknowns at this point," said Deputy Marine Resources Commissioner David Etnier. "We don't even know what it is."

The mandate for a study is part of a bill to reform rules governing Maine's aquaculture industry. Although bay management efforts could also affect fishermen, boaters, and even waterfront landowners, it is the aquaculture industry that has been the focus of intense conflicts between conservationists and coastal landowners on one side and the fish and shellfish farmers who lease ocean bottom from the state on the other.

A state task force assigned by the Legislature to evaluate the state's aquaculture industry recommended a list of rule changes this winter that would both help the industry grow and limit its impacts on neighbors. Several of the changes are now part of the bill, which was endorsed by the Legislature's Marine Resources Committee and is expected to win House and Senate approval.

One proposed change, for example, would allow each leaseholder to double the size of their overall lease area from 250 to 500 acres so that fish farmers could rotate fish pens and reduce their impacts on the environment. Another requires that any proposed aquaculture operation not conflict with the public's enjoyment of conserved lands.

The task force focused much of its debate on bay management as a way to ease conflicts surrounding aquaculture but the group could not agree on whether to support them. Although some members of the group's advisory panel liked the idea of deciding ahead of time where fish farms are or are not appropriate, others saw it as one more obstacle for an industry that is already under assault. In the end, the task force agreed only that the state should study the idea.

Maine's State Planning Office is seeking federal funds to conduct the study, which will be overseen by officials from several different state agencies, including the Department of Marine

Resources and the Department of Environmental Protection. The bill directs the committee to create one or more pilot projects, investigate bay management systems used around the world and present final recommendations by January 2007.

It's unclear what part of the Maine coast will be selected for the pilot study.

Roger Fleming of the Conservation Law Foundation, an environmental advocacy group in Rockland, said the study is an important step into the 21st century for Maine's busy coastline.

Dramatic population growth along the coast will continue to place more pressure on the shore from the land side, he said. And there are growing demands to use the water and marine resources for such things as raising fish, kayaking or research.

"Right now, the management system is ad hoc - it's project by project," he said. Each time a conflicting use enters a bay, it becomes the focal point of the larger battle over how to balance uses and protect the environment, he said. "In our view, the idea is to get out in front of all this."

Fleming acknowledges that the idea needs to be debated and defined. But, he said, it should be designed to change and adapt as conditions change and scientific knowledge improves.

"One logical way this could play out is that people would create what are effectively development zones. They would also add no-development zones," he said.

Areas that are important for habitat or even scenic value could be protected. The aquaculture industry would benefit as well, Fleming said, because areas would be designated for fish farming or other commercial uses. Planning in advance would spare the aquaculture industry costly fights over the siting of new pens, he said.

Those areas should be defined, he said, using the local knowledge of people on and around that particular bay. Ideally, he said, the local community also would have some role in implementing the plans and managing the uses. That would encourage the community to take more responsibility for protecting the resources, he said.

There is a long list of unanswered questions, such as how to determine the boundaries of management areas. The prospect for local oversight draws the most criticism and questions about the idea, however.

Ocean waters within three miles of land belong to the state, and are managed as a public trust. Coastal towns exercise some authority over harbor boat traffic, moorings, clam licenses and other uses of state waters and submerged lands. But the state has primary responsibility for making sure the ocean serves all Maine citizens.

It is the state, therefore, that issues permits for oyster farms or salmon farms. Coastal communities and residents, who sometimes object to the industrial operations, cannot now overrule those decisions.

If residents of a coastal community establish bay management plans and decide to limit certain uses, said Etnier, the system would run counter to hundreds of years of Maine's public trust doctrine. "The water does not belong to riparian owners, but to all the people of the state of Maine."

Fleming said bay management can and should respect that public trust. Local communities should be involved in making and overseeing the plans, he said, but they also should follow state guidelines and defer major decisions to the state level. "I think it's incredibly important to have local participation and management, not local control," he said.

Members of the aquaculture industry say the question of who will create and enforce the management plans is a huge concern.

"We are the minority, so what are the chances that our voice would be heard equally with the people who want to preclude us," said Sebastian Belle, director of the Maine Aquaculture Association. "Is it based on science or is it based on majority rule?"

Belle and others argue that the industry is under assault from wealthy newcomers who have been buying coastal property and do not respect the state's traditional working waterfront. Bay management plans could give their adversaries another tool, they say.

"They want to use bay management as a tool to kill off aquaculture," said Erick Swanson, owner of Trumpet Island Salmon Farm in Blue Hill Bay.

Swanson said the existing management system works the way it is. Laws protect the coastal waters for all state residents, and there already is a whole complex network of specific management systems and traditions that balance the way the resource is used, he said.

Each industry already follows its own set of rules and there is a hierarchy of uses that are constantly balanced by the state, he said.

Fish farms, for example, can only be located where they do not interfere with navigation or fishing, and only in areas that are shown to have tides and other conditions that will prevent environmental damage. Under the proposed law, they also will not be allowed to interfere with the use of conservation lands.

"The whole leasing process is a process of elimination," he said.

Bay management plans can't regulate ship traffic - that's up to the U.S. Coast Guard. They won't move lobstermen from territories that have been established over generations, he said. And zoning the ocean can't work the way it does on land because many valuable marine resources are always moving around.

"Fishermen go where the fish are," he said, "That's just the way it's going to be."

Swanson is so convinced the idea of bay management won't work, in fact, that he favors the plan to study it.

"I think the study is going to be good for everybody," he said, "because it will get it all out in the open."

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